IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1289 of 1983
WITH
CROSS OBJECTION NO.136 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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GUJ STATE ROAD TRANSPORT CORPN - Appellant(s)
Versus
GUARDIAN KANTABEN VALLABHDAS & 1 - Defendant(s)

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Appearance :
MR MD PANDYA for Appellant(s) : 1,
MS KJ BRAHMBHATT for Defendant(s) : 1,1.2.1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 23-9-82 passed by the Motor Accident Claims Tribunal, Jamnagar, in MACP No. 1289 of 1983 whereby the Tribunal awarded an amount of Rs. 30,500/- along with interest at the rate of 6% per annum payable to the appellant by the respondent nos. 1 & 2.

2. The respondent No.1 had filed a claim petition through his next friend and guardian, his wife Smt. Kantaben, claiming compensation to the tune of Rs. 50,000/- in respect of the injuries received by him in a vehicular accident which took place on 29-10-79 outside the gate of the S.T.Depot of Jamnagar. That on the relevant date and time, the claimant was proceeding towards Khambhalia Gate from the Sat Rasta locality with his auto rickshaw No.GTZ 3398 and that as the fuel in the tank was already consumed, he was not in a position to drive the auto rickshaw, but was leading the same. At that time, S.T. Bus No.GRS 7815 had come there and while negotiating a curve for entering into the gate of the S.T.Bus Stand, it had given a violent dash to the auto rickshaw and that the auto rickshaw was dragged for a pretty long time, as a result of which the claimant had sustained various injuries on the chest, head, legs and other parts of the

body. The Tribunal after hearing the parties passed the aforesaid award.

3. Ms Desai, learned counsel for the appellant has contended that there is contributory negligence and the amount awarded by the Tribunal is on a higher side more particularly three doctors were examined and Dr. Gandhi, who has stated that the claimant has suffered permanent partial temporary disability of 10 % of the fingers of the right hand and in view of settled principles, 5 % for the body as a whole. She has further submitted that looking to the percentage of disability and keeping in view of its effect in the background of claimant's avocation, it was erroneous to estimate the monetary loss resulting from the disability at Rs.150/- p.m.

4. As against that, counsel for the respondents has supported the judgment and award of the Tribunal and requested that the amount of Rs.2,000/- awarded under the head of pain,

shock and suffering is very less and it should be Rs.10,000/-.

5. I have heard the learned counsel for both the sides. The claimant was earning Rs.900/- per month. The first contention regarding contributory negligence on the part of the claimant, as discussed by the Tribunal in para 10 of the judgment is left, I am in complete agreement with regard to negligence on part of the S.T. driver. However, second contention which has been raised by the appellant regarding disability for the body as a whole is required to be accepted in view of the fact that the doctor has satisfied in examination the aspect of the disability not by certificate. Therefore, at the most permanent partial disability of the claimant should be taken at 10 %, which for the body as a whole would come to 5 % as per the settled principles. The income of the claimant was Rs.900/- and even the principles laid down in the decision of of the Apex

Court in the case of ***"U.P. State Road Transport Corporation and Ors. Vs. Trilok Chandra & Ors."*** reported in ***1996(3)GLR 136*** for calculating the future loss of income is made applicable, future loss of income of the claimant would not be more than Rs.135/- and looking to 5 % disability for the body as a whole, the monthly loss would come to Rs.67.50/-, yearly it would come to Rs.810/- and applying multiplier of 15, which is just and proper, the claimant would be entitled to Rs. 12,150/- under the head of future loss of income, Rs.500/- towards medical expenses, Rs.3,000/- towards pain, shock and suffering. In that view of the matter, the claimant would be entitled to Rs.15,650/-. However, the Tribunal has awarded compensation of Rs.30,500/-.

6. In the result, the appeal is partly allowed. Out of the amount deposited by the appellant-corporation, Rs.14,850/- (Rs.30,500-Rs.15,650=Rs.14,850/-) be refunded to the

appellant-corporation. There shall be no order as to costs.

7. In view of the above order passed in First Appeal No.1289 of 1983, Cross Objection No.136 of 2006 stands disposed of with no order as to costs.

(***K.S.JHAVERI, J.***)

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